

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: (SUMMARY ORDER). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 29th day of August, two thousand seven.

PRESENT:

HON. CHESTER J. STRAUB,
HON. ROBERT D. SACK,
HON. DEBRA ANN LIVINGSTON,
Circuit Judges.

ABDULAMIT SATKU,
Petitioner,

v.

ALBERTO GONZALES, ATTORNEY GENERAL,
Respondent.

07-0736-ag
NAC

FOR PETITIONER: Raymond S. Santiago, Freehold, New
Jersey.

FOR RESPONDENT: Peter D. Keisler, Assistant Attorney
General, Cindy Ferrier, Senior
Litigation Counsel, R. Alexander

1 **Goring, Attorney, Office of**
2 **Immigration Litigation, Civil**
3 **Division, U.S. Department of**
4 **Justice, Washington, D.C.**

5 UPON DUE CONSIDERATION of this petition for review of a
6 decision of the Board of Immigration Appeals ("BIA"), it is
7 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
8 review is DISMISSED in part and DENIED in part.

9 Petitioner Abdulamit Satku, a native of Yugoslavia and
10 a citizen of Macedonia, seeks review of a January 30, 2007
11 order of the BIA affirming the January 3, 2005 and July 11,
12 2005 decisions of Immigration Judge ("IJ") Joanna Miller
13 Bukspan pretermittting his application for asylum and
14 denying his applications for withholding of removal and
15 relief under the Convention Against Torture ("CAT"). In re
16 Abdulamit Satku, No. A 95 864 054 (B.I.A. Jan. 30, 2007),
17 aff'g No. A 95 864 054 (Immig. Ct. N.Y. City, Jan. 3, 2005)
18 and No. A 95 864 054 (Immig. Ct. N.Y. City, July 11, 2005).
19 We assume the parties' familiarity with the underlying facts
20 and procedural history of the case.

21 Where, as here, the BIA issues an opinion that fully
22 adopts the IJ's decision, this Court reviews the IJ's
23 decision as supplemented by the BIA. See Yan Chen v.
24 Gonzales, 417 F.3d 268, 271 (2d Cir. 2005). We review the

1 agency's factual findings, including adverse credibility
2 findings, under the substantial evidence standard, treating
3 them as "conclusive unless any reasonable adjudicator would
4 be compelled to conclude to the contrary." 8 U.S.C. §
5 1252(b)(4)(B); see, e.g., Belortaja v. Gonzales, 484 F.3d
6 619, 623 (2d Cir. 2007).

7 As an initial matter, this Court lacks jurisdiction to
8 review the agency's decision to pretermitt Satku's asylum
9 application. Although Satku did not challenge that decision
10 before the BIA, the BIA nevertheless addressed the issue,
11 and, thus, it is deemed exhausted. See Xian Tuan Ye v. DHS,
12 446 F.3d 289, 296-97 (2d Cir. 2006). However, because Satku
13 challenges only the correctness of the IJ's fact-finding and
14 the agency's exercise of discretion, we are without
15 jurisdiction to consider his arguments and accordingly
16 dismiss the petition for review to that extent. See 8
17 U.S.C. §§ 1158(a)(2)(B), 1158(a)(3). See also Xiao Ji Chen
18 v. U.S. Dep't of Justice, 471 F.3d 315, 329 (2d Cir. 2006)
19 (noting that courts lack jurisdiction to review claims
20 regarding the untimeliness of asylum petitions when such
21 claims "essentially dispute[] the correctness of an IJ's
22 fact-finding or the wisdom of his exercise of discretion").

1 Proceeding to consider Satku's arguments regarding the
2 denial of his withholding application, we agree that the
3 IJ's adverse credibility finding was not supported by
4 substantial evidence. This finding rested solely on the
5 discrepancy between Satku's testimony at the hearing that he
6 had been arrested by Macedonian police on numerous occasions
7 and his earlier denial of ever having been arrested,
8 contained in a May, 2001 visa application submitted to U.S.
9 consular officials. [JA 54]. Satku, who sought this visa at
10 a time when, according to his testimony, he had been subject
11 to arbitrary arrests and beatings by Macedonian police,
12 explained to the IJ that he lied on his application because
13 he believed that if he told the truth about the arrests, he
14 would not receive the visa. [JA 212]. Although the IJ was
15 not required to accept this explanation, the IJ's reliance
16 upon this single discrepancy as the sole basis for an
17 adverse credibility determination was not reasonable. Those
18 fleeing persecution sometimes lie to escape the country
19 where they face persecution, and such lies can be fully
20 consistent with a well-founded claim to refugee status. See
21 Rui Ying Lin v. Gonzales, 445 F.3d 127, 133-35 (2d Cir.
22 2006).

23 We nevertheless conclude that substantial evidence

1 supports the agency's determination that Satku was
2 ineligible for withholding of removal. Satku testified that
3 he was subjected to arbitrary arrests and beatings by
4 Macedonian police on account of his activities on behalf of
5 Albanian political organizations. [JA 191-204]. The IJ
6 concluded that this testimony was not credible and did not
7 demonstrate past persecution. [JA 69-70]. Assuming that
8 Satku's evidence established that he was subject to past
9 persecution, the agency reasonably concluded that the
10 Government had established a fundamental change in
11 circumstances in Macedonia sufficient to rebut any
12 presumption that Satku has a well-founded fear of future
13 persecution based on his past experiences. See, e.g.,
14 Hoxhallari v. Gonzales, 468 F.3d 179, 184-87 (2d Cir. 2006)
15 (affirming denial of petition on the ground that fall of
16 communism in Albania constituted a fundamental change in
17 circumstances). See also 8 C.F.R. §§ 1208.13(b)(1),
18 1208.13(b)(1)(i)(A).

19 As the BIA observed, since Satku's departure from
20 Macedonia the political parties have entered into a
21 Framework Agreement "which [has] resulted in the
22 implementation of constitutional and legislative changes for
23 improved civil rights for ethnic minority groups." [JA 2].

1 The record indicates that in the 2002 Macedonian
2 parliamentary elections, opposition parties, including an
3 Albanian party, won a majority of seats. The 2003 State
4 Department Country Report submitted by the Government did
5 not indicate widespread persecution of ethnic Albanians
6 during 2003, but instead affirmed that the Macedonian
7 government generally respected the human rights of its
8 citizens. [JA 307]. Substantial evidence thus supports the
9 agency's conclusion that the Government had shown a
10 fundamental change in circumstances in Macedonia. See
11 Hoxhallari, 468 F.3d at 186-87 (noting agency's expertise in
12 assessing country conditions).

13 Finally, Satku based his CAT claim on the same facts as
14 his withholding claim, and these facts were insufficient to
15 establish that Satku faces persecution on his return to
16 Macedonia. Therefore, substantial evidence supports the
17 agency's determination that Satku did not show he would
18 likely face torture in Macedonia. See Kyaw Zwar Tun v. INS,
19 445 F.3d 554, 567 (2d Cir. 2006).

20 For the foregoing reasons, the petition for review is
21 DISMISSED in part and DENIED in part.
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FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: _____